

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Modernizing the FCC Form 477 Data Program

WC Docket No. 11-10

Development of Nationwide Broadband Data to
Evaluate Reasonable and Timely Deployment of
Advanced Services to All Americans,
Improvement of Wireless Broadband
Subscribership Data, and Development of Data on
Interconnected Voice over Internet Protocol (VoIP
Subscribership

WC Docket No. 07-38

Service Quality, Customer Satisfaction,
Infrastructure and Operating Data Gathering

WC Docket No. 08-190

Review of Wireline Competition Bureau Data
Practices

WC Docket No. 10-132

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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Dated: March 30, 2011

I. INTRODUCTION

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ hereby files comments in response to the Notice of Inquiry and Notice of Proposed Rulemaking (“Form 477 NPRM” or “NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) on February 8, 2011, in the above-captioned proceeding.² Through the NPRM, the Commission seeks comment on “whether and how to reform the Form 477 data program to improve the Commission’s ability to carry out its statutory duties”.³

The MDTC welcomes this opportunity to respond to the Commission’s inquiries and applauds the Commission’s initiative to implement much needed reform and improvement to the Commission’s broadband data collection practices. The MDTC supports the Commission’s continued commitment to increase public access to broadband services, consistent with the National Broadband Plan’s (“Broadband Plan”) recommendations.⁴ The MDTC limits its comments to Commission inquiries on deployment, pricing, and subscription data, and offers the following for consideration.⁵

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. See MASS. GEN. LAWS ch. 25C, § 1.

² See *In re Modernizing the FCC Form 477 Data Program; Dev. of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Servs. to All Americans, Improvement of Wireless Broadband Subscribership Data, and Dev. of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership; Serv. Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; Review of Wireline Competition Bureau Data Practices*, WC Docket Nos. 11-10, 07-38, 08-190, 10-132, Notice of Proposed Rulemaking, FCC 11-14 (rel. Feb. 8, 2011) (“Form 477 NPRM”).

³ *Id.* at ¶ 1.

⁴ FED. COMM’N COMM’N, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010) (“BROADBAND PLAN”), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf.

⁵ The MDTC’s silence on any particular issue presented by the Commission should not be construed as rejection or support of that issue.

II. DISCUSSION

A. DEPLOYMENT

The MDTC urges the Commission to acquire deployment information through the Form 477 process. As the MDTC has previously noted, in its present form the Commission's Form 477 "is still insufficient to provide an accurate portrayal of the current market, let alone the evolving market."⁶ The MDTC concurs with the necessity of deployment data to ensure universal service by helping to identify areas that lack access to fixed or mobile voice and broadband networks and to assist the Commission in targeting support to areas that most need it.⁷ The MDTC additionally affirms the necessity of deployment data to ensure public safety mandates through the identification of wireline and wireless E-911 capability.⁸ For these reasons, the MDTC strongly urges the Commission to collect deployment data for wireline voice, including voice over internet protocol ("VoIP"), wireless voice, wireline broadband service, and wireless broadband service.

The MDTC reiterates its previous position that the best format level for the collection of deployment information for all technologies would be standardized digital Geographic Information Service ("GIS") coverage maps, or alternatively, a range of address segments where service is actually provided by the carrier.⁹ Information collected at the address level can be

⁶ Joint Comments of the Mass. Broadband Inst. and the Mass. Dep't of Telecomms. and Cable at 10, *In re A National Broadband Plan for Our Future*, GN Docket No. 09-51 (filed June 8, 2009) ("MBI/MDTC Joint Comments").

⁷ See Form 477 NPRM at ¶ 49.

⁸ *Id.* at ¶ 27.

⁹ See MBI/MDTC Joint Comments at 10.

aggregated more accurately in different forms, and can be utilized more efficiently when represented on a map.¹⁰

The MDTC concurs with the Commission that its speed tier reporting requirements comply with the National Telecommunications and Information Administration (“NTIA”) requirements, and the MDTC further concurs that the speed tier reporting should be reduced from its current reporting level of 72 possible combinations.¹¹ The MDTC suggests the Commission eliminate all reporting tiers slower than 4mbps download and 1mbps upload transfer rates, consistent with the Broadband Plan’s recommendation for a universalization target.¹² The Broadband Plan states that the target level “represents a speed comparable to what the typical broadband subscriber receives today, and what many consumers are likely to use in the future.”¹³ The Commission should cease the practice of collecting speed tiers that are not representative of the needs and expectations of the present day consumer, and start utilizing speed tiers that are relevant both now and for the future. Doing so provides administrative benefits by eliminating 32 possible reporting combinations.¹⁴ The MDTC also proposes that the two download transfer rate speed categories currently defined as “greater than or equal to 3 mbps and less than 6 mbps” and “greater than or equal to 6 mbps and less than 10 mbps” should be

¹⁰ *Id.*

¹¹ *See* Form 477 NPRM at ¶ 60.

¹² BROADBAND PLAN at 135, “[e]nsuring all people have access to broadband requires the [FCC] to set a national broadband availability target to guide public funding. An initial universalization target of 4Mbps of *actual* download speed and 1Mbps of *actual* upload speed, with an acceptable quality of service for interactive applications, would ensure universal service.”

¹³ *Id.*

¹⁴ This estimate presumes that the Commission utilizes the current Form 477 reporting matrix as a starting point, and further presumes that the speed tiers defined by “[b]roadband lines where the download information transfer rate to the end user is greater than or equal to 3 mbps and less than 6 mbps” would at least be adjusted to reflect a minimal download rate of 4mbps. Fed. Comm’n Comm’n, Instructions for Local Telephone Competition and Broadband Reporting (FCC Form 477) at § III.I.VI, *available at* <http://www.fcc.gov/Forms/Form477/477inst.pdf> (“Form 477 Instructions”).

combined to read “greater than or equal to 4 mbps and less than 10 mbps”.¹⁵ This adjustment condenses the reporting requirements to 24 possible speed combinations. The MDTC believes these simplifications reduce the reporting and administrative burdens inherent in the 72 combination system while yielding informative speed data. Consistent with Broadband Plan recommendations, the speed tiers should be revisited every four years to account for shifts in consumer expectations and technology.¹⁶

B. PRICING

The MDTC urges the Commission to collect pricing information using the Form 477 process. The MDTC reiterates its previous position that pricing information is essential in order to make an appropriate affordability and a functional availability analysis.¹⁷ In addition:

For purposes of section 706, the FCC should not consider broadband available to a consumer unless, at a minimum, the necessary infrastructure is deployed in the consumer’s area and the service offered to the customer is affordable. The MDTC agrees ... that “[t]he FCC must develop data to review pricing in order to analyze fully whether broadband is available to all Americans... It is essential that broadband not just be deployed in the ground, but the service offered must be priced such that it is affordable to the majority of American citizens.”¹⁸

The MDTC also affirms the value and necessity to collect pricing data to measure whether programs within the Universal Service Fund are meeting goals based on performance criteria.¹⁹

¹⁵ *Id.*

¹⁶ The Broadband Plan recommends the FCC review the public investment universalization target every four years to account for technology improvements and shifts in consumer usage. *See* BROADBAND PLAN at 135.

¹⁷ *See* Mass. Dep’t of Telecomms. and Cable Reply Comments at 3, *In re Inquiry Concerning the Deployment of Advanced Telecomms. Capability in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecomms. Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159 (filed Oct. 5, 2010) (urging a functional availability analysis and stating that “simply because a consumer has physical access to broadband service does not mean that it is actually available to him or he in a meaningful sense”).

¹⁸ *Id.* at 4.

¹⁹ *See In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Costs Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC

Finally, the MDTC affirms the necessity of collecting price data to fulfill the Commission's mandate to monitor telephone and broadband competition by providing the Commission with data that can be used to measure the effect, if any, of competition on pricing.²⁰ The MDTC believes the analysis of pricing data is fundamental to the Commission's ability to determine whether nominally competitive providers in fact have comparable offerings in the market.²¹

The MDTC recommends a pricing data acquisition methodology that is guided by two primary, yet distinct, drivers. First, as indicated above, is the Commission's need to conduct a functional availability analysis which requires an examination of affordability for the voice and broadband products offered by carriers and necessitates the collection of pricing for select services. Second, the Commission's responsibility to monitor the competitive marketplace necessitates the collection of an array of pricing plans for a broad range of provisioned services.

The MDTC urges the Commission to analyze retail affordability for voice service by requiring voice providers to report the retail monthly recurring charges ("MRCs") for each standalone USF-supported service offered by the carrier, whether or not the carrier actually receives support for the service.²² The MDTC also recommends the Commission require broadband providers to report the standalone price for products meeting or reasonably

Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-12 at ¶458, ("we propose to require high-cost funding recipients – and ultimately [Connect America Fund] recipients - to report to USAC on deployment, adoption, and pricing for both their voice and broadband offerings.") (rel. Feb. 9, 2011); Form 477 NPRM at ¶ 66 ("ensuring universal service by determining whether rural customers are paying affordable and reasonably comparable rates to those in urban areas").

²⁰ Form 477 NPRM at ¶ 66.

²¹ *Id.*

²² See 47 C.F.R. § 54.101 (the services currently designated for support via federal universal service support mechanisms are voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers).

comparable to the Broadband Plan's universalization target of 4mbps download and 1mbps upload speed.²³ This data would allow for more effective measurement of reasonably comparable rates and for affordability of communications services, thus ensuring that universal service goals are met.

The MDTC urges the Commission to collect the actual retail prices charged to end users by voice and broadband providers through the Form 477 process, including both standalone and bundled services. The MDTC proposes the Commission require providers to report pricing for five categories of service: wireline voice, wireless voice, wireline broadband, wireless broadband, and video. Within each of the five product categories, the Commission should specify a limited range of broad product descriptions that a provider might offer on a standalone basis. For example, for wireline voice the sub-categories might include unlimited local service and unlimited long distance service. The Commission would stratify each standalone service by a range of possible MRCs (for example, \$15-\$29.99, \$30-\$44.99, etc.) for which the providers would identify the number of residential subscriptions within each census tract that meet the strata. In addition, to capture the impact of promotional pricing in a competitive marketplace, the providers should be able to indicate when standalone services are combined (i.e., a bundle of services), and indicate the number of subscriptions per pricing strata for the applicable bundles. The MDTC recommends that the reporting of MRCs should include provider-offered promotional pricing but would not include taxes, irregular fees, ancillary services and other like add-ons. The MDTC believes this level of pricing data would allow the Commission to effectively monitor and measure the benefits nominal competition yields to the retail consumer.

²³ The MDTC recommends the Commission utilizes the universalization target prior to the effective transition to the Connect America Fund. *See* BROADBAND PLAN at 135.

The MDTC finds the census tract level appropriate because it will provide sufficiently granular data for meaningful pricing comparisons between rural and urban markets. In addition, census tract data will allow the Commission to analyze the effects of multiple competitors within individual markets. Further, the MDTC believes sensitive customer information is not at risk with reporting at this geographic granularity because the information would simply contain the actual MRCs charged to each customer served within a census tract for a specified month without identifying any sensitive customer information such as a customer's address.

The MDTC believes that these reporting requirements will capture a significant amount of the market and serve to inform the Commission on the competitive nature of the marketplace while recognizing that not all products, services, and fees are captured through this proposal, including services with a measured component. The proposed reporting requirements serve to provide a snapshot of the dynamic nature of the marketplace by capturing actual charges inclusive of promotional pricing.

C. SUBSCRIPTION

The Commission seeks comment on whether and how to collect subscription data for voice and broadband services.²⁴ Currently, the Commission requires wireline voice carriers to identify the number of subscribers by zip code, and for each state the carriers are additionally required to identify the percentage of lines that serve residential consumers, and to identify how the service is provisioned.²⁵ The Commission requires wireless voice providers to report the number of subscribers by state and to identify the percentage of subscribers that are pre-paid.²⁶

²⁴ See Form 477 NPRM at ¶ 77.

²⁵ Form 477 Instructions at §§ III.H.V., III.D.II.A.

²⁶ *Id.* at § III.F.III.

The Commission requires broadband providers to report the number of subscribers, the speed provisioned to consumers and the technology utilized by census tract.²⁷

The MDTC believes that, at a minimum, the Commission should maintain the current framework of questions. The MDTC believes that the existing requirements provide valuable insight for both competition monitoring and public safety purposes, especially because it indicates the degree to which subscribers are reliant upon particular networks for services and E-911 delivery.²⁸

The Commission seeks comment on the geographic level at which to collect voice and broadband subscription data.²⁹ The MDTC recommends that both datasets be collected at the same geographic level: the census tract (or the most granular level determined not to be unduly burdensome by the Commission). The MDTC believes that census tract data is the best approach, since broadband subscription data is currently collected at the census tract level.³⁰ Further, this level provides an efficient and consistent means to compare subscription data to demographic statistics.

The MDTC also recommends that the Commission collect wireline and wireless voice subscription data on primary lines; for wireline services, this should be reported separately for residential and business lines. This information should provide the Commission and state agencies with a more accurate estimate of the number of households that have decided to “cut the

²⁷ *Id.* at § III.B.I.A.

²⁸ This is especially true as the Commission considers establishment of a nationwide interoperable public safety network and tries to assess network requirements. *See, e.g., Keeping Us Safe: The Need for a Nationwide Public Safety Network: Hearing Before the S. Comm. on Commerce, Science, and Transportation* (Sept. 23, 2010) (statement of James Arden Barnett, Jr., Chief, Pub. Safety and Homeland Security Bureau, Federal Comm’n Comm’n) (testifying “on the need for a nationwide, interoperable public safety broadband network”).

²⁹ *See* Form 477 NPRM at ¶ 80.

³⁰ Form 477 Instructions at § III.B.I.A.

cord” by subscribing only to a wireless voice service, or possibly forgo voice service altogether.³¹

With regard to wireless carriers, the MDTC recommends that the Commission request information on prepaid plans, residential plans, and business plans. As an initial step, the MDTC recommends carriers separately report the number of prepaid subscriptions from monthly subscriptions. Prepaid subscriptions should be reported on a census tract level by the point of sale. For monthly plans, the carriers should identify the number of primary lines and the aggregate number of supplemental lines that are included on the primary accounts. This information should be reported separately for residential and business accounts. The MDTC believes that this information will help further the Commission’s competition monitoring by providing valuable information about voice and wireless market dynamics.

III. CONCLUSION

Thank you for this opportunity to comment.

Sincerely,

/s/ Geoffrey G. Why

Geoffrey G. Why, Commissioner
Massachusetts Dept. of
Telecommunications and Cable

³¹ See, e.g., FED. COMM’N COMM’N, TRENDS IN TELEPHONE SERVICE, at § 16-1 (Sept. 2010).